

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GERRY WILLIAMS,

No. C 04-2409 SI

Plaintiff,

**ORDER RE: DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

v.

LT. ROSS et al.,

Defendants.

Defendants' motion for summary judgment is scheduled for a hearing on December 1, 2006. After review of the parties' papers, the Court finds there are disputed issues of fact sufficient to defeat summary judgment on plaintiff's claim that defendants Tuntakit and Roach were deliberately indifferent to plaintiff's serious medical needs. Similarly, the triable issues of fact as to what actually transpired on September 6, 2003, preclude summary judgment for defendants on their qualified immunity defense.

However, defendants' reply contends that plaintiff did not suffer any legally cognizable harm as a result of the delay in providing medical care because plaintiff took nitroglycerin pills – the same treatment plaintiff received at the MTA – while in his cell. *See Reply* at 8:5-20. Plaintiff testified at his deposition that he took a pill at approximately 7:00 p.m. and two more pills at approximately 7:20 p.m., and that the pills did not help with the pain. *Williams Depo.* at 119, 125. As such, defendants argue that plaintiff has not submitted any evidence to suggest that the delay harmed plaintiff. Because defendants did not raise this specific argument until the reply brief, plaintiff has not addressed this issue. **The parties shall be prepared to discuss this issue at the December 1, 2006 hearing.**

IT IS SO ORDERED.

Dated: November 27, 2006



SUSAN ILLSTON
United States District Judge